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Sixty-third session

SUMMARY RECORD OF THE 1689th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 24 July 1998, at 10 a.m.

Chairperson: Ms. CHANET

later: Mr. EL SHAFEI
(Vice Chairperson)

later: Ms. CHANET
(Chairperson)

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GE.98-17097 (E)

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of the United Republic of Tanzania (CCPR/C/83/Add.2; CCPR/C/63/Q/URT/1/Rev.1)

1. At the invitation of the Chairperson, Mr. Malambugi and Mr. Kalanje (United Republic of Tanzania) took places at the Committee table.

2. The CHAIRPERSON welcomed the delegation of the United Republic of Tanzania and invited the head of delegation to make an introductory statement.

3. Mr. MALAMBUGI (United Republic of Tanzania) said it was unfortunate that the final list of issues to be taken up in connection with the consideration of his delegation's report (CCPR/C/63/Q/URT/1/Rev.1) had been received only a short time previously and that his delegation had been unable to undertake the necessary consultations to respond adequately to all the questions raised. Since not all missions had computer connections to their capitals and had to rely on more traditional methods of communication, he proposed that the list of issues be made available to the reporting State at least three months before the date on which the report was to be considered so as to give the delegation concerned time to prepare the responses.

4. The most important development since the consideration of Tanzania's second periodic report in 1992 had been the reintroduction of political pluralism after more than two decades of single-party rule. Elections for local government councils in 1993 and general elections for the presidency and the parliament in October 1995 had already been contested on a multi-party basis. The ruling party, Chama cha Mapinduzi (CCM), had emerged victorious in both elections.

5. The expansion of democracy with the entry of other actors into the political arena had been accompanied by greater government liberalism in allowing for the operation of privately owned newspapers, radio and television stations, which had mushroomed overnight. It was testimony to the changing times that there were currently many more privately owned media than government-controlled ones.

6. The judiciary had taken a proactive role in defending human rights. Judges did not hesitate to strike down any legislation found to be contrary to the Constitution. As the population became more aware of human rights, litigation on the subject was increasing.

7. The introduction of multi-party politics had not, however, been without its teething problems. Losers, on either side of the political spectrum, did not readily accept their fate. That was why, more than two and a half years into the five-year mandate of the current Parliament, election petitions were still being submitted. Only a week previously, a prominent minister had lost his portfolio as a result of a successful petition by his constituency opponent. The overwhelming number of petitions had clogged up the court system. The hiring of acting judges to expedite them had been a palliative only, with the consequence that ordinary cases were piling up in the High Court.

8. In Zanzibar, despite the magnanimity of the ruling party in offering the opposition a role in government, an offer that had promptly been rejected, the losing party was likewise refusing to accept the results of the presidential elections and was boycotting sessions of the House of Representatives as well as conducting actions of passive resistance which often ended up in the commission of common crimes. It was hoped that efforts by the Secretary-General of the Commonwealth to mediate in that stand-off would result in an acceptable compromise.

9. Since much of what was currently taking place in his country emanated from the adoption of the Nyalali report, he wished to describe it briefly. The principal terms of reference given to the Nyalali Commission had been to ascertain the views of Tanzanians in respect of the desirability of continuing with a one-party State, to consider the pros and cons of changes in the political set-up and to recommend ways in which the basic principles of democracy could be established and expanded. It had been mandated to examine, and to recommend any necessary changes to, the Constitutions of the United Republic of Tanzania and Zanzibar and any other relevant legislation. It had been requested to examine in detail the question of whether any changes in the position of Zanzibar in the Union would be in Zanzibar's interests, taking into account its history, politics and culture.

10. The major findings of the Nyalali Commission had been that the two Constitutions had many shortcomings and that some of the laws of the two countries were flawed. To rectify those shortcomings, the Commission had recommended that certain articles of the two Constitutions be repealed so as to remove the constitutional monopoly of political power by the ruling party. Both Governments had agreed to that proposal and the offending articles had been duly expunged.

11. In order to give effect to the Commission's recommendations and to introduce political pluralism, the Government had promulgated amendments to the Constitution that were applicable to both parts of the Union. It had also undertaken and continued to undertake the necessary amendments to other pieces of legislation so as to expand the enjoyment of human rights by Tanzanians.

12. Lastly, the Nyalali Commission had identified 40 pieces of "repressive" legislation, which either denied or constrained the rights and freedoms of the people, and they had been referred to the Law Reform Commission for in-depth analysis. The Commission had finalized its review and released the results a week previously. The Tanzanian Government had not accepted one major recommendation of the Nyalali Commission, the establishment of a federal system composed of a federal government plus the Governments of Tanzania and Zanzibar, on the grounds that such a move would weaken the Union and entail a heavy financial outlay.

13. Turning to the list of issues (CCPR/C/63/Q/URT/Rev.1), he said that, as a common-law country, the United Republic of Tanzania did not automatically apply international conventions without incorporating them into domestic legislation. In principle, therefore, the provisions of the Covenant could not operate as a direct source of individual rights or be invoked in courts of law. Nevertheless, Tanzanian courts were prepared to be guided by the letter and spirit of human rights instruments ratified by the Government and, though the Covenant could not be cited by name, the courts did apply its underlying principles in their decisions.

14. With respect to paragraph 2 of the list of issues and the complex matter of customary law, he said that a review had been made of laws that were incompatible with international human rights instruments. The Government was currently engaged in enacting new legislation on inheritance and land law geared towards eliminating gender inequalities and other biases. Significant amendments to the Penal Code included the enactment of special provisions regarding sexual and other offences so as to create further safeguards for the personal integrity, liberty and security of women and children, to impose punishment on guilty parties and to ensure compensation and protective measures for victims. Female genital mutilation had been made a criminal offence under the Penal Code.

15. One of the problems in dealing with sexual offences was the fact that cases were heard in open court and many victims were unwilling to denounce the offences due to the negative publicity and the stigma attached to the victim. It was hoped that the promulgation of the Sexual Offences Act, allowing for the hearing of such cases in privacy, would remedy that situation.

16. There were no legal restrictions on equal access by women to employment but, in actual practice, owing to their lack of education women did not stand as good a chance of obtaining employment as men. They usually dropped out of school and there were fewer schools for girls than for boys. While parity of enrolment of boys and girls in primary schools had been achieved, there was a major discrepancy at the higher educational levels. The Government was trying to rectify that situation, however, and had taken affirmative action to lower the pass mark for girls so that more of them could enter secondary school and, where possible, boys' schools had been opened for the enrolment of female pupils.

17. As a measure of its commitment to gender equality, the Government was considering ratification of ILO Conventions Nos. 100 and 101 on equal remuneration and discrimination, respectively. In Zanzibar unmarried women who became pregnant were liable to imprisonment for three years. Men who impregnated women outside marriage were liable to five years' imprisonment.

18. With respect to paragraph 3 of the list of issues, he said that the term "absolute necessity" had never been clarified in practice, since no state of emergency had ever been declared in his country and it was not possible, therefore, to explain the circumstances in which it would be used. Section 31 (3) of the Constitution prohibited deprivation of life, with the sole exception of death arising from acts of war. It would thus appear that the President had no power to derogate from the right to life. Section 31 was, however, one of the provisions recommended for review by the Nyalali Commission.

19. The Government of the United Republic did not release figures on the number of people executed. The death penalty existed both on the mainland and in Zanzibar, but was not carried out on minors. Since the revolution of 1964, the death penalty had never been imposed in Zanzibar. While understanding the sentiments of the abolitionists, the Government needed the death sentence on its statute book as a deterrent.

20. The law prohibited mob justice, whether meted out to suspected thieves or to suspected witches: such cases were accordingly dealt with by the Penal Code. Concerning the death of a member of the Civic United Front (CUF) in 1993, the policeman who had fired the lethal bullet had been arrested and charged with murder. The shooting had taken place during a riot, however, and the court had found that the act had been an unintentional one. The accused had been discharged, but administrative steps had been taken to dismiss him from the police force. The fatal shooting had been largely the result of poor training in riot-control methods and a lack of appropriate gear: riots had not often been experienced during single-party rule. To avert any repetition, the Government had procured riot-control gear, including rubber bullets.

21. Corporal punishment was imposed by the courts both on the mainland and in Zanzibar in conformity with the Corporal Punishment Ordinance and was administered in schools for serious breaches of school discipline. Strokes, which should not exceed six, were administered by striking the pupil's hand or normally clothed buttock using a flexible stick. Female pupils received such punishment from female teachers; where none was available, written authorization from the head of the school was required. The statute providing for corporal punishment was among the 40 pieces of "repressive" legislation recommended for review or repeal.

22. Answering the questions in paragraph 4 of the list of issues, he said that, according to the United Nations High Commissioner for Refugees (UNHCR), the United Republic was currently hosting 267,000 refugees from Burundi, 47,000 refugees from the Democratic Republic of the Congo, 5,500 refugees from Rwanda and 3,000 to 4,000 refugees from Somalia. The Government estimated that an additional 500,000 or more refugees had settled spontaneously in the country but were not recognized by UNHCR because they were self-sufficient.

23. For security reasons deriving from the militarization of the refugee camps, the movement of refugees had had to be confined to the camps. Children born in the camps to refugee women were registered by UNHCR and inherited both the refugee status and the citizenship of their parents.

24. Concerning paragraph 5, he said that section 12 (6) (e) of the Zanzibar Constitution prohibited torture or inhuman or degrading treatment or punishment. The Government of Zanzibar was very careful about its handling of political figures and did not ill-treat them for fear of negative publicity. Investigations carried out by the authorities in response to complaints from the Special Rapporteur on questions related to torture invariably showed that those complaints were not well founded and were mainly politically inspired.

25. Turning to paragraph 6 of the list of issues, he said that, owing to the shortage of time for the preparation of replies, he had no information on the number of cases of people detained under the Preventive Detention Act or the length of such detentions. The Act was very rarely invoked, however, and was one of those identified by the Nyalali Commission as being inimical to the enjoyment of human rights in Tanzania. In the eight years since the current President had assumed power, no one had been detained in Zanzibar under the Act.

26. In reply to the questions in paragraph 7, he said that prison conditions had deteriorated due to the economic problems facing the United Republic of Tanzania. Since independence, the Government had not built enough new prisons to keep up with the population increase, and there was serious overcrowding in almost all prisons. Prisoners received medical care, however, and the basic philosophy was to rehabilitate them so that they could become better citizens. Prisoners were consequently given training in practical skills so that they would be able to cope when released. To relieve congestion, the Government had adopted legislation to introduce a parole system, and the courts were encouraged to hand down non-custodial sentences whenever possible.

27. There was no prisons inspectorate, but inspections were supposed to be carried out on a monthly basis by visiting magistrates and judges so that they could review prison conditions and recommend remedial measures. There had, indeed, been deaths in prison, the result of natural causes: where there were any grounds for suspecting foul play, an inquest was held to establish the cause of death and take any legal action if needed.

28. The CHAIRPERSON said that the delegation of the United Republic of Tanzania appeared to have misunderstood the procedure followed by the Committee in considering reports, since the introductory statement by the head of the delegation had, in fact, answered a number of the questions in the list of issues. The purpose of the list was to structure the oral discussion and, since answers had already been given to the questions in paragraphs 1 to 7 of the list, she invited the members of the Committee to ask any follow-up questions they might have.

29. Lord COLVILLE said that the mandate of the Nyalali Commission had primarily been to review the single-party system. That review had resulted in reforms which, in terms of article 25 of the Covenant, were clearly improvements on the previous situation and enabled citizens to participate in political life without unreasonable restrictions. The Committee applauded those advances and hoped that they would help to overcome the "teething" problems mentioned by the head of the delegation.

30. The Committee would, however, like to hear about some of the other important issues that had been addressed by the Nyalali Commission. For instance, some account of the other subjects covered by the 40 pieces of legislation identified as requiring reform and referred to the Law Reform Commission would be of interest. He would like to know whether, upon completion of the work of the Nyalali Commission and of the Law Reform Commission, there was any overall strategy for further review and whether a parliamentary committee or other organ had been envisaged to undertake an ongoing review of legislation in terms of its compliance with human rights requirements as a separate exercise from the work of the Constitutional Court, which could only extrapolate, slowly and laboriously, from the individual cases submitted to it.

31. Noting that the legal system, both on the mainland and in Zanzibar, was still clogged up by cases arising from the elections of October 1995, he said that it would be useful to have an idea of the size of the backlog. Was it still growing, and was the judiciary able to keep pace with it? Had it led to

long delays in criminal trials? He would also welcome further information about the practice of hiring acting judges to help the judiciary keep up with its workload and, in particular, about what was being done to ensure that the independence and educational level of the acting judges were adequate. Were the criteria for appointing acting judges as strict as those governing the appointment of regular judges?

32. Mr. El Shafei, Vice-Chairperson, took the Chair.

33. Mr. PRADO VALLEJO said that, while he welcomed the significant advances achieved in the political field in Tanzania since the second periodic report, there were some aspects of the third report that still gave grounds for concern. Paragraph 7, for instance, spoke of restriction on the registration of political parties which were based on religion or tribalism or based on only one region of the country. It would be helpful if the delegation could expand further on the reasons for that restriction.

34. According to paragraph 47, the right to life could apparently be suspended under certain circumstances. If so, that was surely in flagrant contradiction with the fundamental principle set forth in article 4 of the Covenant. He hoped that the delegation would provide full clarification on that point.

35. Paragraph 57 referred to the possibility of certain categories of detainees being held incommunicado for limited periods of time. Experience in other countries showed that it was precisely during periods of incommunicado detention that the worst abuses tended to occur, and an explanation was thus called for.

36. According to paragraph 61 of the report, corporal punishment, which had been abolished in 1972, had been brought back in 1989 and was administered in cases of certain violent offences. That state of affairs was clearly inconsistent with article 7 of the Covenant. Noting that the Nyalali Commission had questioned the appropriateness of maintaining corporal punishment (para. 63), he invited the delegation to explain the reasons for its reintroduction.

37. While appreciating Tanzania's difficulties in the face of the problem of large numbers of refugees from neighbouring countries, he considered that some of the Government's reactions to the problem were unacceptable and should not recur. There were reports that certain refugees from Burundi had been handed over to the authorities of that country in January 1997 and had been immediately executed. That was unquestionably contrary to the principle of asylum and the protection of refugees. It was also reported that many Rwandan refugees had gone into hiding in Tanzania for fear of being returned to their country where they, too, faced possible death.

38. What was the Tanzanian Government's policy on the refugee issue? What measures was it taking, or planning to take, to control the serious violence said to be widespread in the refugee camps? Lastly, was it correct that Tanzania did not allow refugee families to reunite, and if so, for what reason? Family reunification was an important humanitarian principle that should be respected wherever possible.

39. Ms. Chanet resumed the Chair.

40. Mr. BHAGWATI said that Tanzania's third periodic report was, perhaps, a little lacking in details of the practical application of the Covenant, but that shortcoming had to some extent been offset by the delegation's introduction. The first set of supplementary questions he wished to ask related to the judiciary. What was the representation of women in the judiciary? Had any changes been made, in view of the Law Reform Commission's recommendations, to the existing inheritance and land ownership laws for women, and if not, did the Government have any plans to bring about gender equality in those areas?

41. Noting that the power of appointment, promotion and dismissal of magistrates was vested in the President, who exercised it in consultation with the Chief Justice, he asked whether the advice of the Chief Justice was binding upon the President in all cases. Were magistrates given opportunities for further training, especially in the field of human rights, after their appointment? Were there special seminars or conferences for judges, including High Court judges and judges of the Court of Appeal? That point was of particular importance in view of the fact that not all of the rights under the Covenant were incorporated in the Constitution of Tanzania.

42. In other Commonwealth countries, steps were taken to acquaint judges with ways in which provisions of international instruments not found in the Constitution could be incorporated into domestic law through a process of interpretation. Similar action should be taken in Tanzania. For his part, he would like to see all the rights covered by the Covenant incorporated into the Constitution, and he wondered whether any recommendation to that effect had been made by the Law Reform Commission.

43. Was any provision made for legal assistance to persons charged with a criminal offence in accordance with article 14, paragraph 3, subparagraph (d), of the Covenant? What was the maximum period of pre-trial detention, and how long did it normally take for a defendant to be brought to trial? Did the victims of unlawful detention receive compensation in accordance with article 9, paragraph 5?

44. Turning to the question of the rights of persons in the position of refugees, he associated himself with the comments made by Mr. Prado Vallejo and asked whether the Minister for Home Affairs, when deciding upon an applicant's refugee status, was obliged to follow the advice of the National Eligibility Committee. What was that Committee's composition? Was there any possibility of appeal against the Minister's decision? In determining refugee status, did the Minister follow the definition provided in the 1951 Convention relating to the Status of Refugees or the much wider definition adopted by the Organization of African Unity (OAU)? In the case of assisted refugees, was some of the assistance provided by UNHCR or did the Government bear the entire burden?

45. Was it true that foreign citizens, including some who had lived in Tanzania for more than 10 years, were sometimes rounded up and taken to refugee camps where they were not allowed to engage in any form of work, even small-scale farming? Where were asylum seekers held until their status had

been determined by the Minister? Were there special reception centres, and if so, how many? What were the conditions in such centres? Was it true that a refugee who committed an offence could be remanded in custody for several months or even years?

46. Mr. ZAKHIA asked whether the Law of Marriage Act of 1971 referred to in paragraph 30 of the report was compulsory and, if not, whether the Government was envisaging any steps to encourage the more developed sections of society to adopt marriage practices based on the equality of the sexes. If a Tanzanian citizen married abroad under a law which conflicted with Tanzanian customary law, which of the two laws would prevail?

47. Referring to the problem of single women who became pregnant, he asked whether there was not a risk of clandestine abortions that could endanger the lives of both mothers and children. He invited the delegation to provide figures concerning abortions and the deaths consequent upon them.

48. Ms. GAITAN DE POMBO said that the fact that children were not allowed to take part in armed conflict was particularly important in view of the growing militarization of the refugee camps. The delegation had provided some overall figures for the refugee population, but she would like some more detailed statistics about refugee children. What was their precise status, and how were they registered? What was the Tanzanian Government's policy with regard to foreigners not recognized as refugees by UNHCR?

49. Mr. KLEIN said that, while the submission of the third periodic report of Tanzania was to be welcomed, he was somewhat disappointed by the scant information the report contained about the actual practice and jurisprudence in human rights matters. While joining previous speakers in recognizing the importance of Tanzania's return to a multi-party system, he noted that not very much progress had been made since the Nyalali Commission's recommendations of 1992. The recommendations of the Law Reform Commission had not yet been implemented and it was unclear to what extent they would be implemented in the future.

50. While he accepted Tanzania's commitment to the principle of the rule of law, as formulated in paragraph 145 of the report, there could be no doubt, however, that many existing laws were clearly in contradiction with the Covenant, and he was disappointed by the continuance of such violations, of which the Government appeared to be aware. Tanzania was a common-law country, which meant that provisions not incorporated in domestic law could not be invoked, but that did not affect Tanzania's international obligations or the international responsibility it incurred by breaching them. In that connection, he asked whether the United Republic of Tanzania continued to operate a dual system of statute law and customary law, so that people could choose to marry, for example, under either regime.

51. While he welcomed the statement in paragraph 60 of the report that persons were not expelled to countries where they might be subjected to torture he noted that an exception was made in the case of countries with which an extradition treaty had been concluded. Since the principle involved had the status of jus cogens, it took precedence over extradition treaties.

52. Associating himself with Mr. Prado Vallejo's remarks on corporal punishment, he said it was most distressing that the practice had been reintroduced in 1989 - 13 years after the United Republic of Tanzania had ratified the Covenant. The delegation had mentioned that corporal punishment was administered in cases of rape and robbery. Were those the only cases and was it supplementary to other forms of punishment? How frequently was it used in practice?

53. According to paragraph 79 of the report, the President was empowered under the Deportation Ordinance to deport a person who was conducting himself in a manner that might lead to public unrest. How frequently had that Ordinance been used? Was there any possibility of a judicial review in such cases?

54. The delegation had admitted that there was serious overcrowding in Tanzanian prisons. Economic constraints could not be invoked to justify a violation of article 10 of the Covenant. What steps were being taken to remedy the situation and to protect prisoners against violence by fellow inmates, a phenomenon that was frequently associated with overcrowding.

55. Mr. KRETZMER said that paragraph 44 of the report asserted that the use of firearms by the police and security forces was strictly controlled. There were many allegations, however, that people had been gunned down by the police or shot dead while in custody. Alleged incidents included the death in custody of six persons suspected of robbery at Arusha in January 1998, the shooting of two persons in Mwembechai in February 1998 and of one person in Mbezi Temboni, and the shooting of a suspect as he attempted to escape from custody. He would like to know who investigated allegations that the police were not observing the rules of conduct and whether there was any provision for an independent inquiry.

56. Tanzanian non-governmental organizations (NGOs) alleged that beatings of detainees had become almost standard practice in police stations. What form of monitoring existed to prevent police officers, who were perhaps inadequately trained or unaware of the relevant legal rules, from engaging in such conduct?

57. Paragraph 55 of the report referred to provisions prohibiting illegal forms of search and arrest. What was the status of evidence obtained as a result of such illegal procedures? Would it be thrown out by the courts?

58. As admitted in the report, the Preventive Detention Act had been severely criticized. He asked for more details concerning a detainee's right to challenge his detention in the courts, if possible with reference to specific cases.

59. In view of the prevailing attitudes and customs in Tanzanian society, as described in the report and the delegation's introductory remarks, he was particularly concerned at the situation of women in detention. What steps were taken to protect women detainees from abuse? Were they held separately from men? Were the prison guards men and, if so, what steps were taken to prevent harassment and sexual abuse?

60. Under the 1965 Citizenship Act, a foreign woman who married a Tanzanian man acquired Tanzanian citizenship but a foreign man who married a Tanzanian woman did not. Had that discriminatory provision been removed from the 1995 Citizenship Act?

61. Ms. EVATT said that, while she welcomed the introduction of multi-party democracy, she noted that many relics of former times had survived in the legal system and in practice. The Law Reform Commission had made specific recommendations in 1994 and 1995 concerning the reform of discriminatory legislation on the family, marriage, inheritance, custody, maintenance and other matters, but no action seemed to have been taken on those recommendations to date. The marriageable age was still different for men and women and, under customary law, it could be lower than 15 years of age for girls. Polygamous marriage was permitted and customary law discriminated against widows in matters of succession.

62. Was it true that many women were imprisoned for making illicit alcohol? Could Tanzanian women married to foreigners pass on their citizenship to their children on the same terms as men? Was the right of women to own land recognized in the draft land ownership legislation? Had steps been taken to abolish the Witchcraft Ordinance which enabled women to be detained on suspicion of witchcraft? Had marital rape and domestic violence been criminalized? What reasons were used to justify the imprisonment of unmarried pregnant women? Were unsafe illegal abortions the main cause of maternal mortality?

63. Her attention had been drawn to a number of laws that restricted the employment of women and she wondered whether it was true that the President could prohibit the employment of women in certain areas. As noted by the Committee following its consideration of the second periodic report, article 25 of the Constitution admitted the possibility of various forms of compulsory labour, in violation of the Covenant. She understood that a number of laws also provided for compulsory labour.

64. She inquired about the Sungusungu anti-crime groups, which had been accused of using excessive force against suspects. Did they still exist and, if so, what authority was exercised over them?

65. Ms. MEDINA QUIROGA said that, since the Covenant could not be directly invoked before the courts, the domestic remedies described in paragraph 16 of the report were extremely important. Petitions to the High Court were described as an effective remedy but she had been told that the requirement for three judges to be present for a court hearing led to long delays.

66. According to paragraph 18, when the High Court found a law or measure to be unconstitutional, it did not automatically declare it null and void but offered the Government or the authority concerned a chance to rectify its mistake. That did not sound like an adequate remedy for victims. How much time was allowed for corrective action and what happened if the authority concerned refused to act?

67. The delegation had stated that rubber bullets were to be used by the police in the future. Experience had shown that such bullets could cause a great deal of damage and she advised great caution in their use.

68. According to paragraph 51, capital punishment was not applied to minors under 18 years of age. Did the minimum age apply to the date on which the crime was committed or to the date of execution of the death sentence? Were any statistics available on the number of executions carried out?

69. She associated herself with Mr. Kretzmer's question about presidential powers under the Preventive Detention Act, with Mr. Klein's question regarding extradition and with Mr. Prado Vallejo's comments on corporal punishment.

70. The issue of customary laws and practices deserved more than the six lines accorded it in the report. The State party's second periodic report (CCPR/C/42/Add.12) contained a great deal of information about forthcoming activities but there was no follow-up thereto in the third periodic report. For example, paragraphs 46 and 47 of the second periodic report provided statistical information on girls in education but there were no statistics in the later report. She wished to know what progress had been made in the meantime.

71. Paragraph 51 of the earlier report announced that the Land Commission would look into the question of women's legal rights in respect of real property, but there again there had been no follow-up. Was it true that a land bill had been tabled in Parliament which would legalize certain customary laws that discriminated against women?

72. According to paragraph 55 of the second periodic report, a husband who was economically better off than his estranged wife could invoke that status to gain custody of the children. How much weight was given to the economic factor, which would generally militate against the mother? Had the situation changed in the meantime?

73. Rape in the United Republic of Tanzania was a felony in the case of minors under 14 years of age but girls under 12 years of age could get married and their marriage could be consummated from the age of 12. That struck her as a form of legalized rape. What was the authorities' response to the relationship between rape in prisons and imprisonment for out-of-wedlock pregnancies? What preventive measures had been adopted?

74. She associated herself with the questions that had been asked concerning abortion. One in 18 women risked death from complications relating to maternity. As only between 10 and 14 per cent of women used contraceptives, unwanted pregnancies were a major problem.

75. Was it true that the inter-party women's organization Baraza la Wanawake wa Tanzania, mentioned in paragraphs 25 and 30 of the report, had been deregistered and, if so, why?

76. Mr. SCHEININ apologized to the delegation for the late transmission of the list of issues. There had been no discrimination, however, since all delegations had been equally disadvantaged. Perhaps the Committee should review its policy in the matter.

77. The report conveyed the impression that the United Republic of Tanzania was engaged in an intensive process of promotion of human rights. There

seemed to be a tendency towards stagnation, however, and it was of the utmost importance that the momentum should be maintained and the recommendations of the Nyalali Commission implemented through the Law Reform Commission. There were provisions of the existing legislation that were clearly incompatible with international human rights standards, such as the Witchcraft Ordinance and the provisions regarding corporal punishment. The latter issue had been referred to in the Committee's previous concluding observations.

78. He associated himself with the questions asked by Ms. Evatt and Ms. Medina Quiroga concerning the rights of women. The prohibition against abortion was very strict, the only exception being preservation of the mother's life. A rape victim who was forced to carry her pregnancy to term was exposed to the risk of suicide, depression and maternal mortality. The right to life and the prohibition of inhuman treatment were both at issue. He asked for additional information on the enforcement of the law.

79. Female genital mutilation was a criminal offence but apparently continued in some regions. How frequent was the practice and how was the law enforced?

80. He understood that there were moves afoot to criminalize marital rape when a couple were separated but not during cohabitation. What was the justification for making such a distinction?

81. He associated himself with the questions asked by Mr. Prado Vallejo and Mr. Klein concerning the treatment of refugees. How were the rights recognized in articles 6 and 7 of the Covenant guaranteed in the case of persons facing deportation or extradition? He referred in particular to the 126 persons who had allegedly been handed over to the Burundi authorities in January 1997 and executed.

82. Mr. ANDO said that, although the report was deficient in some respects, it was important that the dialogue should continue, so that the Committee could help the Government of Tanzania to find ways of overcoming any difficulties it was encountering in improving the human rights situation there.

83. There had been some misunderstanding on the part of the delegation concerning the methodology used in considering reports. The procedure whereby the Committee adopted the list of issues at the beginning of each session in which a report was to be examined ought not to be new to Tanzania, since it had been followed on the occasion of the consideration of its second periodic report. However, the Committee would do its best to speed up the process, and he asked the delegation for its understanding if there had been a delay in the delivery of the list.

84. He associated himself with the point raised by Mr. Klein with regard to the situation of duality whereby written law ran side by side with customary law. The same point had been raised in the course of the examination of the second periodic report, but it appeared that the situation remained basically unchanged. If that was so, the Committee needed more information about the

application of customary law, so that it could identify areas where that law was not in compliance with the Covenant. That was particularly true in the area of gender equality.

85. The Emergency Powers Act and the Preventive Detention Act both gave the President very wide powers with regard to the detention of individuals. He understood that the Acts had been criticized, not only by the Committee but within Tanzania itself, and that amendments had been proposed. Again, the situation did not seem to have changed much, and he would be glad to learn what the prospects were of a solution to the problem.

86. He had understood from what the delegation had said that a proposal for a federal system had been rejected. He would appreciate a further explanation of the difficulties encountered in that regard and their implications for human rights.

87. Mr. POCAR said it was regrettable that the question of the Committee's methodology for considering reports should have been raised, since Tanzania's second report had been considered without giving rise to any problems. He was also disappointed in the report itself, which did not comply sufficiently with the Committee's guidelines, and fully supported the views expressed by Mr. Klein on that matter.

88. He noted that, since the submission of Tanzania's second periodic report, the situation appeared to have stagnated. In 1992, the Committee had recommended, first, that a clear legal basis be provided for giving full effect to the provisions of the Covenant and, secondly, that provisions of the Constitution and national law that were not in conformity with the Covenant should be amended. He did not see any substantial change in the provisions concerned, notably those governing the state of emergency.

89. Paragraph 49 of the report stated that there was a "range of safeguards" guaranteeing the protection of those who faced the death penalty, such as the right of appeal. It then stated that the convicted person could appeal to the President to commute the sentence. Did that right of appeal represent the full range of safeguards available? He would also appreciate some clarification regarding the statement in paragraph 51 on the application of the death penalty to minors.

90. He was very concerned about the use of corporal punishment in Tanzania. There were also a number of articles of the Covenant, notably articles 7 and 9, that were not being fully respected in regard to the treatment of refugees and asylum seekers. He would like to know more about the legal provisions governing those matters.

91. Mr. EL SHAFEI said that, as had already been pointed out, the Bill of Rights of the Tanzanian Constitution did not fully reflect the rights enshrined in the Covenant, and he suggested that the Government should take the necessary steps to remedy that situation, as required by article 2, paragraph 2. He would also be glad if the delegation could explain any factors and difficulties impeding the full enjoyment of human rights in the

country. Were there any legal provisions prohibiting discrimination on the grounds of political opinion in Tanzania, and was it intended to take any affirmative action to overcome such discrimination?

92. Did all detainees have the right to correspondence and visits, and what was the frequency of such visits? Could prisoners speak to visitors without the presence of a guard, and were they allowed to receive private visits from their doctors? Was restriction of correspondence and visits used as a punishment, and was correspondence censored? With regard to disciplinary matters, how were allegations investigated, who presided over the hearings, and did the detainee have the right to be represented by counsel? Was the corporal punishment of detainees legitimate, and if so, what form did it take and what was the frequency of its use?

93. Lastly, he associated himself with the questions asked concerning the application of customary law in Tanzania, and hoped to hear from the delegation what progress had been made by the Law Reform Commission on the issue.

94. Mr. MALAMBUGI (United Republic of Tanzania) thanked the members of the Committee for the clarification they had provided concerning the procedure used in preparing the list of issues. However he still thought that, if the Committee genuinely desired to establish a dialogue with the States parties and expected proper replies to be given to all the questions asked, it should find a way of ensuring that more time was allowed and that the list of issues was made available at an earlier stage.

95. Replying to the questions asked, he said that Tanzania did not yet have a constitutional court, although provision had been made for establishing one. Legislation was being reviewed on a day-to-day basis by the Law Reform Commission, whose recommendations were forwarded to the Attorney-General. The latter could, of course, exercise his discretion in deciding whether or not to accept them.

96. Reference had been made to the backlog of cases in the courts: that problem affected mainly the High Court, which could not give precedence to cases of accused persons awaiting trial because of the need to hear election petitions. The petitions had to be dealt with promptly enough to enable members of Parliament to exercise their functions within the five-year period of the life of Parliament.

97. On the question raised by Lord Colville, he said that in one instance the Government of Zanzibar had hired judges from Nigeria, but that was an exceptional case. By "acting" or "ad hoc" judges, he had meant persons who had the necessary legal qualifications to be appointed judges of the High Court (for example, practising lawyers), who were given a limited mandate to try a particular case. There was also the practice of giving extended jurisdiction to resident magistrates, who were also legally qualified persons with a number of years' experience, to enable them to try cases that they would not normally handle.

98. The period from the arrest of the accused to the time he came before the judge differed considerably in different cases, and could be as long as

two years. He emphasized that there was a difference between "arrest" and "detention": arrests were a normal procedure under the Criminal Procedure Code, whereas detention was an exceptional procedure used under the Preventive Detention Act. The Government was aware of the problem of delays caused by the backlog of cases, and had re-established case-management-flow committees to look into it.

99. A number of pieces of legislation had been recommended for review or repeal. They included the Preventive Detention Act, the Corporal Punishment Ordinance, the Deportation Ordinance, the Human Resources Deployment Act, and the Witchcraft Ordinance. He would provide the Committee with a full list of the instruments at a later stage.

100. Concerning the restriction on the establishment of political parties referred to by Mr. Prado Vallejo, it should be borne in mind that Tanzania was unique in being made up of two Governments, the Government of Zanzibar and the Government of Tanzania. In order to create that union, the people of both countries had had to sacrifice some of their sovereignty. The purpose of the Political Parties Act was simply to protect the union: although Tanzania had been a country for some 70 years, it still had problems of national cohesion and national identity. For the same reason, the Act prohibited the formation of political parties based on religious grounds.

101. In respect of paragraph 47 of the report, it was true that there had been no real development in the situation since the second periodic report had been considered. However, the President was currently de facto prohibited from denying anyone the right to life even in a state of emergency, and the articles of the Constitution on the matter had been forwarded to the Law Reform Commission for review and possible repeal. The Commission itself had criticized the extraordinary powers given to the President by the Emergency Powers Act.

102. Corporal punishment had, in the past, been abolished but had since been reinstated on the insistence of the law-enforcement officers. He was not convinced that corporal punishment could be said to constitute cruel, inhuman or degrading treatment or punishment.

103. On the question of incommunicado detention, he said that persons on remand were supposed to be brought before a magistrate within 24 hours of their arrest, although that did not always occur in practice. Officers failing in their duty in that respect could be charged with abuse of power. Detention under the Preventive Detention Act had been resorted to in only a very small number of politically sensitive cases, and was a legacy of the one-party system. He doubted whether it had been utilized since the adoption of the system of political pluralism.

The meeting rose at 1 p.m.

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Sixty-third session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1690th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 24 July 1998, at 3 p.m.

Chairperson: Ms. CHANET

later: Ms. MEDINA QUIROGA

later: Ms. CHANET

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GE.98-17194 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of the United Republic of Tanzania (continued) (CCPR/C/83/Add.2; CCPR/C/63/Q/URT/1/Rev.1)

1. At the invitation of the Chairperson, the Tanzanian delegation resumed their places at the Committee table.

2. Mr. MALAMBUGI (United Republic of Tanzania), replying to the questions posed by the Committee members at the previous meeting, began by pointing out that the definition of refugees applied by his country was the one used by the Organization of African Unity. If that had not been the case, then most of the Rwandan and Burundian refugees would not have been authorized to enter Tanzanian territory. The refugee eligibility committee was composed of representatives of the Office of the President, the Office of the Prime Minister, the Ministry of Foreign Affairs, the Ministry of Justice and the Office of the United Nations High Commissioner for Refugees (UNHCR). As there had been a massive influx of refugees, there had been no individual screening. Unfortunately, that had sometimes led to problems, as in the case of Rwandan refugees; members of the former army and militias had passed themselves off as refugees, and had caused serious problems in the country and throughout the region. All assisted refugees lived in camps set up by UNHCR. Those who were not assisted by UNHCR lived in the country's villages together with the people of Tanzania.

3. The birth registry system in the United Republic of Tanzania was only just beginning to develop. Of the country's 96 districts, only 8 had an official system for registering births. In the others, registration took place at hospital. In the case of refugees, birth and registration in the United Republic of Tanzania did not automatically lead to entitlement to Tanzanian citizenship.

4. The refugee camps were entirely run and managed by UNHCR, with the host country simply naming a commandant for each camp. Conditions at the camps were undeniably quite poor. Those refugees who went directly to Dar es Salaam and whose cases were considered under the individual screening procedure were generally much better off. Violence was a constant problem at the camps. The Tanzanian authorities did everything in their power to ensure security, but in the light of the means available to the country, the material and human resources it could devote to that task were unfortunately insufficient. Generally, Hutu and Tutsi refugees were placed in separate camps, with the exception of mixed couples, for whom a special camp had been established.

5. Serious criticism had been levelled against the United Republic of Tanzania for the expulsion of 136 refugees to Burundi in 1997. The number of persons killed during that incident was not as high as certain sources had claimed. Furthermore, those expelled had been armed combatants from various political factions which had been responsible for very serious clashes in the camps. The Burundian authorities to whom the deportees had been handed over had promised to resettle them in safe areas. Consequently, the international community should firstly call on them for an explanation.

6. Concerning preventive detention, there had been no new developments since the publication of the second periodic report. In any case, no one could be detained for more than 15 days without being informed of the reasons for the detention. An advisory committee consisting of a chairman and two members named by the President and another two members appointed by the Chief Justice considered the case of each detainee and made recommendations to the President, who could then determine whether the person was to be released or kept in preventive detention. Furthermore, any person subject to a detention or deportation measure could challenge that measure before the courts. In the United Republic of Tanzania, the word "deportation" included the internal exile of offenders whom the judicial authorities wanted to place in an environment where they would no longer have the opportunity to commit new offences. The person was left free, but was not authorized to return to his or her region of origin without authorization. Such measures were taken under the law on the resettlement of offenders, which was undergoing review.

7. Various questions had been raised on the subject of extrajudicial executions. Several persons had indeed been killed during the riots in Mwembechai when the police opened fire using live bullets. The matter was before the courts. Concerning the killing by the police of the former Director-General of Tanzanian Intelligence, that incident apparently occurred because he had been mistaken for a car thief. The persons involved had been charged with murder, and two of them had been sentenced to death. The police itself carried out inquiries into extrajudicial executions committed by police officers. The United Republic of Tanzania had no internal police body to monitor the police force.

8. As for the allegations that detainees were tortured or beaten, the police force lacked the training and facilities required for its investigations, and interrogations sometimes degenerated. Because of the camaraderie in the police force, it was not always easy to find those responsible. In any event, the authorities were conscious of the problem and did not condone such acts. Evidence obtained as a result of illegal searches could not be used in court. With regard to judicial review of detention, since the 1970s many people had obtained release after contesting their detention before a court.

9. For the time being, he had no precise information about women falling pregnant while in prison. In principle, female prisoners were separated from male prisoners and placed under the supervision of female warders. He did not know whether the government authorities had taken any more specific measures for the protection of women detainees.

10. The judges of the High Court and the Court of Appeal were appointed by the President on the recommendation of the Chief Justice and the Judicial Services Commission which also appointed judges in lower courts. Judges were dismissed by the President, whose decision was, however, subject to the approval of a commission presided over by a judge from a Commonwealth country. There was a human rights component in the basic training for members of the judiciary, police officers and prison staff. On the other hand, no continuous training was provided, with the exception of that given to higher-level staff through international workshops and seminars held in the country.

11. The United Republic of Tanzania had extradition agreements with Kenya, Uganda, Malawi, Zambia and Rwanda. All extradition requests were considered by the courts, and there was in-built protection against arbitrary extradition, especially in cases where the person could be subjected to torture in the requesting country. Indeed, certain crimes could, in some cases, not be subject to extradition. Extradition remained an exception in Tanzania.

12. No precise figures were available concerning the proportion of women judges. There were some women judges in the subordinate courts but, of the 15 judges of the High Court, only three were women and there were no women judges in the Court of Appeal. That was the unfortunate reality, which could be explained by the low level of education of women, a problem which had already been noted in the previous report.

13. With regard to the 1995 Citizenship Act, he had not received any information from the Tanzanian authorities and did not know whether the provisions which discriminated against women had been removed. He was also unable to provide any further information on clandestine abortions. He had noted the comments made on that subject and would bring the matter to the attention of the Government.

14. There was indeed a Law of Marriage Act, adopted in 1971, under which property acquired during a marriage was the joint property of the two spouses. Unfortunately, it was often not enough simply to pass legislation. Persisting local customs had to be taken into consideration, as they offered strong resistance to laws adopted at the central level. Furthermore, the legislation itself could also be improved, as there remained numerous relics of the past. A commission was currently engaged in a review of the country's laws, but its agenda was very full. One of its main tasks was to balance customary law with written law. For example, the commission had drawn up several proposals addressing the law of inheritance. However, the Muslim community had objected that the proposals submitted for its consideration were contrary to the precepts of Islam. The solution to such problems would depend on how customs evolved, and education would have a key role to play in that regard.

15. Concerning measures to ensure that the national legislation took into consideration the provisions of the Covenant, the Nyalali Commission had not drawn up any specific recommendations, but had made a proposal which, if accepted, would bring national law into line with international standards. The Commission had suggested including a Bill of Rights in the Constitution. To that end, the Government had recently published a White Paper containing a proposed revision of the Constitution, which had to be passed by the Tanzanian people. It was only once the citizens had expressed their views and the Commission had finished its work that it would be known which measures were to be taken.

16. His delegation could provide no further information on domestic violence and marital rape, as it had not yet seen the law recently passed on the subject. Regarding forced labour, the Human Resources Deployment Act of 1983 (paras. 67, 68 and 69 of the report) had been criticized by the International Labour Organization (ILO) for instituting forced labour. In fact, the Act's objective was to make sure that people had work; the main purpose was to avoid

the presence in the cities of persons who had no work with which to provide for themselves, and to mobilize the workforce and employ it in productive activities. Tanzania had much uncultivated land which could permit those who worked it to produce enough food for their own sustenance, and even for sale. Following the criticism made by ILO, the Government had decided to reconsider the Act with a view to amending or repealing it. He hoped that his country would be able to report some positive developments when the Committee came to examine its fourth periodic report.

17. Concerning the BAWATA association, that non-governmental organization had been struck from the list of registered associations because it had violated the terms of its registration. BAWATA's leaders had, however, challenged the law under which it had been de-registered and the court had decided that, pending the final determination of the suit, BAWATA should be authorized to continue its activities.

18. Comments had been made during the discussion about stagnation and a lack of progress in the enjoyment of human rights in the United Republic of Tanzania. His delegation wished to point out, however, that a visitor to the country would not gain that impression from speaking to the man in the street. The country had undeniably made considerable progress with regard to democracy and the enjoyment of human rights, a fact welcomed by all Tanzanians, though they looked forward to more progress in the future.

19. Performing female genital mutilation was now an offence punishable under criminal law. However, such traditional practices, even if outlawed, were still carried on clandestinely, as were abortions.

20. The question had been raised as to why Tanzania had not accepted the idea of establishing a federal system, as proposed by the Nyalali Commission. In that regard, it should first of all be borne in mind that dissenting opinions had been expressed on that question by some members of the Commission, who considered that federalism could weaken the United Republic of Tanzania and even lead to its disintegration. Furthermore, a federal system would be very costly, as it would require three bureaucracies in Tanzania, which already had two administrations. The country was devoting 40 per cent of its budget to paying the salaries of public servants and another 40 per cent to reimbursing the foreign debt; that left 20 per cent for everything else: providing health care, maintaining the army, building schools and prisons, and so on. His delegation was therefore surprised to hear members of the Committee say that financial constraints were no justification for any failure to respect human rights; surely they were a reality which could not be ignored.

21. With regard to the right of appeal, it should be pointed out that murder cases were tried in the first instance by the High Court, and appeals against conviction were made to the Court of Appeal. After determination by the Court of Appeal, a final appeal for presidential clemency could be entered. The report had perhaps not been entirely clear on that point (para. 50).

22. Since the institution of multipartism, there had been no discrimination based on political opinion in the United Republic of Tanzania. In the past 10 years, much had changed in the country with regard to freedom of

the press and the freedom to establish radio stations and carry out political activities. Consequently, there did not appear to be any need for affirmative action to overcome discrimination.

23. With regard to the treatment of detainees, a distinction had to be made between persons under arrest, who were held pursuant to the Preventive Detention Act, and those detained under the Criminal Procedure Code. Convicted persons had rights of visitation and the right to receive mail once a month. However, those rights did not apply to persons detained under the Preventive Detention Act, which set very strict rules; the person could be held in solitary confinement, which meant that he received no news from relatives, the latter would not be informed of his detention.

24. Ms. Medina Quiroga took the Chair.

25. Ms. EVATT, addressing the questions of clandestine abortions and female genital mutilation, emphasized that an important distinction had to be drawn between the two. Clandestine abortion was risky for the health and life of the woman, and abortions were performed clandestinely because of the strict prohibition against the practice in Tanzania. It represented a major cause of maternal mortality. Female genital mutilation was in some cases performed clandestinely, as the delegation had said, and had been the subject of legislation. It was a traditional practice which had existed for many years and which the Tanzanian Government, as many other governments in the region, had committed itself to eradicate, for it too represented a risk to the lives of girls and young women, and exposed them to other dangers. In the case in question, the Government had the obligation not only to pass legislation to eliminate the practice, but also to undertake comprehensive campaigns throughout the country to ensure the protection of its young people.

26. Mr. BHAGWATI, noting that the delegation had indicated that the police sometimes arrested suspects after 3 p.m. on a Friday, so that the detainee would be held until the Monday morning without being presented to a magistrate, asked why the police could not bring arrested persons to the magistrates at their residences. Secondly, the delegation had stated that if the arrested person was not informed of the grounds of his arrest within 15 days, he would be released. A 15-day period was obviously too long, and a violation of article 9, paragraph 2, of the Covenant. Also, assuming that the arrested person was informed of the reasons for his arrest within 15 days, for how long could he be detained after that?

27. Thirdly, the delegation had said that if the court deemed a piece of legislation unconstitutional, it gave the Government time to amend the legislation. What happened if the Government did not do so? Could the court strike down that law as invalid? Furthermore, even if the Government did change the law, what happened to the citizens who had been victims of that legislation before it was amended?

28. Ms. Chanet resumed the Chair.

29. Mr. MALAMBUGI (United Republic of Tanzania) replied that the proposal to bring accused people before magistrates at their homes was a valuable one, but Tanzanian legislation currently had no provision to that effect. If such a proposal were to be made to the authorities, they might consider it.

30. With regard to the observations concerning the 15-day period within which an arrested person had to be informed of the reasons for his arrest or else be released, a distinction had to be drawn between preventive detention and arrests made under the Criminal Procedure Code. The 15-day period applied to preventive detention only. Persons arrested under the Criminal Procedure Code had to be informed of the reasons for their arrest at the time of the arrest.

31. Changing a law which the judiciary found to be unconstitutional was a difficult question. In the past four or five years the courts had taken a very proactive role in striking down numerous pieces of legislation, but that had created what the Government considered a legislative vacuum that it had needed to fill.

32. The CHAIRPERSON invited the Tanzanian delegation to continue with a discussion of the written replies to questions in the list of issues to be taken up in connection with the consideration of the third periodic report of the United Republic of Tanzania (CCPR/C/83/Add.2).

33. Mr. MALAMBUGI (United Republic of Tanzania) said, with regard to elections and political parties, that electoral constituencies were defined by the National Electoral Commission, on the basis of recommendations from the inhabitants of the districts concerned, and that electoral districts should not have fewer than 100,000 inhabitants. The criteria applied in registering political parties were set out in section 9.2 of the Political Parties Act of 1992: political parties should not advocate or further the interests of any religious, tribal, ethnic or racial group, nor should they advocate the breakup of the union, nor accept or advocate the use of violence or force as a means of obtaining their political objectives. Moreover, political parties should not carry out their political activities exclusively in one part of the Republic, and they should allow periodic and democratic election of their leaderships. Prior to receiving full registration, political parties had to be provisionally registered and submit the location of their headquarters, together with the names of their leaderships, which had to be drawn from both parts of the United Republic, and had to include not less than 200 members in 10 regions of the country, including the 2 regions of Zanzibar and Pemba. In order to ensure the maintenance of public order and safety, meetings had to be announced in advance. Initially, it was the district commissioner who gave clearance for political meetings, but, as a result of a decision of the High Court, political parties had only to inform the police prior to holding public rallies, so that the police could make security arrangements.

34. Economic difficulties accounted for the problem of child labour, especially on the large sisal and tea estates and in gemstone mining. The Tanzanian Government did not condone the practice, and had therefore taken part in ILO's international programme for its elimination, which had resulted in a 70 per cent decrease in the incidence of child labour in the country. The United Republic of Tanzania had also ratified ILO Convention No. 138 concerning the minimum age for admission to employment, but children continued to be recruited as domestic servants. That was a considerable problem and it was being addressed through awareness campaigns conducted by civic organizations in the most seriously affected areas of the country . His Government was not of the opinion that the Human Resources Employment Act led

to an institutionalized and systematic compulsion to work; the Act's objective was simply to mobilize the population for productive work in the interests of economic progress. However, in the light of the criticism which that piece of legislation had raised, the Government was reexamining the Act with a view to amending or repealing it.

35. The Tanzanian Government realized that its human rights record was not perfect, and it would continue to strive to improve the situation. It had just produced a white paper which was to be considered over a period of six months by a commission headed by a distinguished Justice of Appeal, from whom it took its name. It was to be hoped that the presentation of the Kisanga Commission's report would open up new prospects for the enjoyment of human rights.

36. Mr. YALDEN said that he had some questions concerning items 16 and 17 of the list of issues, relating to the rights of minorities and the independent monitoring of the human rights situation. He noted that the third periodic report, like the second report, provided no information on articles 26 and 27 of the Covenant. Was there really no discrimination in the United Republic of Tanzania? According to reliable information, it appeared that Asians and the Masai were targets of discrimination. Could the Tanzanian delegation provide some information about the linguistic, ethnic and racial minorities in relation to the issue of discrimination?

37. With regard to gender discrimination, the delegation had emphasized that change took time, especially when it was a question of modifying certain forms of behaviour which should no longer be tolerated in the twentieth century. What were the prospects that the United Republic of Tanzania would adopt anti-discrimination legislation, as had been done in many countries, to secure equality between men and women and to counteract discrimination against minorities, the handicapped and other sectors of civil society?

38. The second subject of concern to him was raised in paragraph 17 of the list of issues: were there monitoring bodies to ensure that human rights violations were dealt with? What jurisdiction did they have? How was their independence ensured, and did they present any reports? A question had also been put to the delegation concerning the action taken against the BAWATA women's organization, which had been "de-registered". According to the report, that organization had played an active role in education and sensitization, and was to undertake a review of legislation and various practices affecting the enjoyment of women's rights. If that organization ceased to exist, there would be even more reason to establish independent human rights monitoring bodies.

39. Mr. SCHEININ, referring to paragraph 138 of the report, noted that a political party called the United Democratic Movement had been refused registration because it had openly advocated the breakup of the Union with Zanzibar, one of the conditions for the registration of a party being its commitment to the preservation of the Union. A discussion of the criteria for the registration of political parties should therefore not only refer to article 25 of the Covenant, but also to article 1, which concerned the right to self-determination (para. 7 of the report). The Constitution stated that Tanzania was single nation and constituted a United Republic, which was indeed

a way of construing that the right of self-determination had already been realized. Yet the Constitution also included a provision for a special amendment procedure whereby the Union could be dissolved; that would require the support of two thirds of parliamentarians from mainland Tanzania and two thirds of parliamentarians from the Tanzanian islands (Zanzibar). It indeed seemed reasonable to require a significant majority to dissolve the union which made up a country. However, the existence of that provision gave rise to the question of why political parties whose objective was to invoke that specific dissolution procedure could not be authorized. Was it a provisional stage in the transition from a one-party to a multi-party system? If not, why did Tanzania consider it necessary to prohibit political parties which advocated the exercise of the right to self-determination under a specific procedure set out in the Constitution?

40. Secondly, under the Constitution, the boundaries of the electoral constituencies were determined by the National Electoral Commission, composed of the Speaker of Parliament and three to five members appointed by the President of the United Republic of Tanzania. As neither the law nor the Constitution set out clear criteria by which to delimit electoral districts, the procedure could give rise to abuse or political jerrymandering. Consequently, was there not a need to provide specific criteria in the Constitution or in the legislation on the electoral system, and to submit decisions applying those criteria to judicial review, so as not to leave the electoral system solely in the hands of the National Electoral Commission?

41. Finally, with regard to the right to privacy (art. 17), the wording in paragraph 102 of the report, referring to homosexuality raised the question of whether there was any legislation in the United Republic of Tanzania forbidding discrimination against homosexuals, and whether homosexual acts were an offence under the Criminal Code.

42. Ms. MEDINA QUIROGA said she deeply regretted that many of the questions on the list of issues had not been answered and the Committee had thus not been fully able to carry out its task. No details had been given in the third periodic report about the implementation of articles 21, 23, 26 and 27 of the Covenant, nor had any information being provided in the replies to the questions asked during the meeting by the Committee members. She wondered why articles 11 and 13 were considered in the same section of the report, since the rights covered by those articles did not necessarily have any points in common. In more practical terms, she was concerned about the juvenile justice system in the United Republic of Tanzania. Paragraph 125 of the third periodic report stated that "juveniles are brought in normal courts" and, according to paragraph 129, children under 12 years of age were not criminally responsible "unless it is proved that at the time of the act ... the child had capacity to know that he ought not to do that act". Were juvenile delinquents at least tried under a different procedure from the one applicable to adults, and was it really the case that a child over 12 years of age could be sentenced to a prison term? Finally, was it true that criminal penalties could be imposed on workers who failed to report for work?

43. Ms. EVATT requested the delegation to provide further information on the reasons why women in the United Republic of Tanzania were apparently heavily under-represented in government bodies and in the judiciary. She also asked

whether measures had been taken to ensure that women could exercise fully their political rights, and in particular the right to vote, considering that polling stations were generally located far from villages and homes, and that women did not always have the time to travel to them because of their family and household responsibilities.

44. The authors of the Warioba report had deplored the fact that bribe-taking was commonplace in the police and among prison staff, and had specifically stated that detainees could not receive attention in prison or be released on bail without paying certain amounts of money. Yet not a single prosecution of those responsible for such practices had been undertaken following the publication of the report. That was surprising, to say the least. Could the delegation offer some explanation?

45. Finally, could the delegation provide further information on the measures taken to overcome the ethnic and religious intolerance persisting in the country, and about the exact role of the "cell leaders", who were apparently still present in the communities? Were they, for example, part of an organized surveillance machinery?

46. Lord COLVILLE, referring to paragraph 17 (a) of the list of issues, asked whether the delegation could provide further information on "bodies which exist to monitor, publicize and promote human rights in Tanzania". He had heard of a Permanent Commission of Enquiry, which had existed since 1966 and operated rather like an ombudsman's office. Had the Commission's role and powers been expanded? Had it taken on the role of a human rights body?

47. Mr. ANDO, referring to paragraph 110 of the report, asked why the Government had considered it necessary to adopt an act authorizing the importation and distribution of foreign newspapers in Tanzania. Was there not freedom of the press, including the foreign press, in Tanzania? He also asked whether the United Republic of Tanzania had any private schools other than those formerly set up by religious missions or groups and, if so, whether the Government regulated the content of the curricula at such establishments.

48. Mr. MALAMBUGI (United Republic of Tanzania) said the Tanzanian Government did not share the opinion that the right to self-determination included the right to secession. In the current political reality, the United Republic of Tanzania included the two territories of Zanzibar and Pemba as a result of a decision which had been taken in 1963, during the establishment of the Organization of African Unity, with the object of respecting the colonial boundaries. It was important to abide by that decision so as to avoid the risk of a return to a society in which each of the country's more than 100 tribes could claim the right to secession. The main priority for a young African country such as the United Republic of Tanzania was the consolidation of national unity.

49. Homosexuality was a criminal offence in the United Republic of Tanzania, and any person found to have engaged in homosexual acts could face criminal charges. That was a sensitive issue, and the population was generally not predisposed to recognizing the rights of homosexuals. As to the question raised by Ms. Medina Quiroga concerning penalties imposed on people who did not report for work, such penalties most often took the form of fines levied

on those who, under district or municipal regulations, were required to undertake communal work, such as the building of roads, and who did not fulfil their obligations. While imprisonment for debt still existed, that penalty was applied only as a last resort when a person failed to meet contractual obligations and, following an inquiry, a judicial decision was taken to that effect. In general, however, the court's decision was enforced by other means than imprisonment.

50. As for the treatment of juvenile offenders, the situation was basically the same as the one described in detail in the second periodic report (CCPR/C/42/Add.12), which was why the third report contained no additional information. However, a special court for minors had recently been established in Dar es Salaam and the Government was constantly striving to improve treatment of juvenile offenders.

51. It appeared that the Committee had been misinformed on the right to vote and, in particular, the exercise by women of their political rights. Polling stations were always located in the vicinity of inhabited areas and every citizen had the opportunity to vote. Furthermore, 15 per cent of all seats in Parliament had been reserved for women, and the Tanzanian Government had been praised for taking that step. Religious intolerance in the United Republic of Tanzania was minimal, such tendencies being attributable to only one small minority group. The country had over 120 tribes, which lived side by side and in harmony, and it hosted refugees and asylum seekers from throughout the African continent. Ethnic intolerance was unknown in the United Republic of Tanzania.

52. The "cell leaders" system had been instituted in the mid-1960s by the party in power, as an administrative mechanism which allowed the Government to convey messages and instructions to the population. Each leader was responsible for approximately 10,000 inhabitants, and ensured liaison with the authorities. A traditional militia system also existed to ensure protection of the population and security in various regions.

53. As his delegation had already indicated, there was a Permanent Commission of Enquiry for which provision was made in the Constitution, its main function being to investigate any abuse of power by the authorities. There had been plans to extend the Commission's mandate by assigning it the task of monitoring human rights, but after some consideration and consultation with experts, it has been deemed preferable to establish an independent human rights commission. Several proposals had been made along those lines.

54. Replying to Mr. Ando, he said that the Government naturally authorized private teaching establishments, which had become even more numerous than the public ones. There were also some private universities. The only regulations imposed by the Government concerned the qualifications of teaching staff, who had to have the required level to provide an education which met the country's requirements. As for freedom of the press, there was an extensive movement of liberalism in the country, and the import and export of publications were regulated more by market forces than by the Government itself. Still, he would request further information on that subject and would forward it to the Committee.

55. Mr. SCHEININ said he had not meant to imply that the right to self-determination necessarily involved the right to secede. He simply wanted to know the reason for prohibiting political parties from invoking section 98 of the Tanzanian Constitution, which set out an amendment procedure by which the union could be dissolved and which would enable the people to exercise their legitimate right to self-determination.

56. Mr. YALDEN said that he had requested information on minorities, such as Asians, in the United Republic of Tanzania, and about discrimination against them. He had not mentioned ethnic intolerance.

57. Mr. MALAMBUGI (United Republic of Tanzania) said that he would transmit Mr. Scheinin's concerns to his country's authorities, as he himself did not have the necessary information.

58. With regard to minorities, censuses covered the population as a whole, without reporting on its ethnic composition. Nonetheless, there were Asian minorities, which had sometimes been subjected to hostility, in particular because they kept many shops and were very active in running the economy. In any event, those responsible for such acts were duly penalized under the law prohibiting racial discrimination. There had been some complaints of discrimination against Masai communities, but they stemmed more from internal conflicts between members of ethnic groups engaged in pastoralism and sedentary agriculture. The Government never discriminated against any of the communities in Tanzania.

59. The CHAIRPERSON thanked the Tanzanian delegation for its replies. The questions raised by the Committee were very specific and often of a technical nature. To supply satisfactory responses, it might have been useful if the Tanzanian delegation had included a representative sent directly from the country by the administration. Many of the Committee's questions had been left unanswered. The Committee also noted with regret that the third periodic report of the United Republic of Tanzania had not been prepared in accordance with its guidelines. As the consideration of the State party report drew to a close, however, several positive developments could be noted, including the establishment of the Nyalali Commission and the institution of multipartism. Although much remained to be done to apply the Nyalali Commission's recommendations, and although the desired changes would take time, it was encouraging that the situation in the United Republic of Tanzania was not static.

60. The Committee nevertheless remained very concerned about numerous subjects, and indeed the Tanzanian delegation had been quite frank with regard to the shortcomings and difficulties encountered in the implementation of the Covenant. A number of laws were not in keeping with the instrument, in particular the law allowing imprisonment for debt. The situation of women also left much to be desired and the Tanzanian authorities did not appear to have any clear idea of how to improve it. One of the measures which could be taken very quickly was to repeal the criminal offence aimed at single, pregnant women. As for corporal punishment, the Tanzanian delegation had contended that the Covenant gave no definition and that the punishment inflicted by law in Tanzania did not fall within the scope of article 7. That was not true, and the Committee referred the Tanzanian Government to its General Comment 20 concerning article 7.

61. Other matters of concern to the Committee included the lack of any independent inquiry into abuses by the police, the Preventive Detention Act, child labour and the prohibition of political parties suspected of having separatist aims.

62. In its concluding observations following the consideration of the third periodic report of the United Republic of Tanzania, the Committee would complement those few remarks and make recommendations to the Tanzanian authorities. It hoped that, for their part, the authorities would provide supplementary written replies to the questions raised by the members and would provide further information on a number of issues, including the establishment of bodies to handle complaints of human rights violations. The possible creation of such bodies had been mentioned in the second periodic report (CCPR/C/42/Add.12), but there was no information about them in the report under consideration.

63. In conclusion, she expressed the wish that the modernization of Tanzanian institutions would continue and that the Committee would be provided with more specific information on the situation in the United Republic of Tanzania when the fourth periodic report was presented.

64. Mr. MALAMBUGA (United Republic of Tanzania) said he would transmit all the Committee's comments and observations to his Government and hoped that the Tanzanian authorities would be able to provide supplementary information in reply to the Committee's questions.

65. The Tanzanian delegation withdrew.

The public part of the meeting rose at 5.20 p.m.